

MAR 10 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE LUIS RODRIGUEZ-MORALES,

Defendant - Appellant.

No. 07-30215

D.C. No. CR-05-00155-RHW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, District Judge, Presiding

Submitted February 26, 2008**

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

Jose Luis Rodriguez-Morales appeals from the 41-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States in violation of 8 U.S.C. § 1326, and being an alien in possession of a firearm

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and ammunition in violation of 18 U.S.C. §§ 922(g)(5)(A) and 924(a)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

As an initial matter, the government contends this appeal is barred by the written appeal waiver in Rodriguez-Morales' plea agreement. This contention is unpersuasive, because the district court advised Rodriguez-Morales at the change of plea hearing that he could appeal his sentence. *See United States v. Buchanan*, 59 F.3d 914, 917-18 (9th Cir. 1995); *see also United States v. Lopez-Armenta*, 400 F.3d 1173, 1177 (9th Cir. 2005).

Rodriguez-Morales contends his sentence was unreasonable. We conclude the sentence was not unreasonable in light of the factors contained in 18 U.S.C. § 3553(a). *See United States v. Booker*, 543 U.S. 220, 260-61 (2005); *see also Gall v. United States*, 128 S. Ct. 586, 591 (2007).

Rodriguez-Morales also raises a variety of contentions relating to the scope and continuing validity of *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). As Rodriguez-Morales concedes in his brief, these contentions are foreclosed by existing precedent. *See United States v. Salazar-Lopez*, 506 F.3d 748, 751 n.3 (9th Cir. 2007).

AFFIRMED.